UNITED
NATIONS

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Security Council

Distr.
GENERAL

S/1996/556
16 July 1996
ENGLISH
ORIGINAL: ENGLISH AND FRENCH

LETTER DATED 11 JULY 1996 FROM THE PRESIDENT OF THE INTERNATIONAL TRIBUNAL FOR THE PROSECUTION OF PERSONS RESPONSIBLE FOR SERIOUS VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW COMMITTED IN THE TERRITORY OF THE FORMER YUGOSLAVIA SINCE 1991 ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

I have the honour to report to the Security Council that a Trial Chamber of the Tribunal, presided over by Judge Jorda and composed of Judges Odio-Benito and Riad, has today delivered a decision under rule 61 of the Tribunal's Rules of Procedure and Evidence in the case of Radovan Karadžić and Ratko Mladić, a copy of part of which is enclosed herewith. The Chamber found that there are reasonable grounds for believing that Karadžić and Mladić are individually responsible for planning, instigating or ordering the commission of genocide, crimes against humanity and war crimes.

Consequently, the Trial Chamber has issued international arrest warrants against the two accused. These warrants will be transmitted to all States, Interpol and the Implementation Force (IFOR).

Furthermore, in accordance with that decision, and pursuant to the aforementioned rule 61, I have been requested to notify you that the failure to execute the initial arrest warrants, issued on 25 July and 16 November 1995 against Radovan Karadžić and Ratko Mladić, was wholly due to the refusal of the Republika Srpska and the Federal Republic of Yugoslavia (Serbia and Montenegro) to cooperate with the Tribunal in accordance with article 29 of the Statute (see attached relevant part of the decision).

The Chamber certified the Republika Srpska's refusal to cooperate on the grounds that Karadžić and Mladić reside in the territory of the Republika Srpska and indeed occupy, or have occupied, official positions of authority in that entity. Although the aforementioned arrest warrants have been transmitted to the Republika Srpska, they have not been executed to this day.

The Chamber also certified the refusal of the Federal Republic of Yugoslavia (Serbia and Montenegro) to cooperate on the grounds that on a number of occasions Karadžić and Mladić have been in its territory and have not been arrested, although the initial arrest warrants have been transmitted to it for execution. In this connection, the Trial Chamber has recalled that on four

occasions I have written to President Slobodan Milosević to complain of this refusal to cooperate, and on one occasion I wrote to the Security Council to bring the matter to its attention (see my letter of 22 May 1996 (S/1996/364)).

The refusal of the Federal Republic of Yugoslavia (Serbia and Montenegro) to cooperate has also been certified on the grounds that, under the Dayton Accord, it has undertaken responsibility for the Republika Srpska's cooperation or non-cooperation with the Tribunal as well as its own.

As President of the International Tribunal for the former Yugoslavia, I am therefore duty-bound to bring to the attention of the Security Council the refusal of the Republika Srpska and the Federal Republic of Yugoslavia (Serbia and Montenegro) to cooperate with the Tribunal, so that the Council can decide upon the appropriate response.

(Signed) Antonio CASSESE
President

Annex

UNITED NATIONS

International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of Former Yugoslavia since 1991

Case No. IT-95-5-R61
IT-95-18-R61

Date: 11 July 1996

Original: English
French

IN THE TRIAL CHAMBER

Before: Judge Jorda, Presiding
Judge Odio Benito
Judge Riad

Registrar: Mr Dominique Marro , Deputy Registrar

Decision of: 11 July 1996

PROSECUTOR

v.

RADOVAN KARADŽIĆ
RATKO MLADIĆ

REVIEW OF INDICTMENT PURSUANT TO RULE 61 OF THE RULES OF PROCEDURE AND EVIDENCE

The Office of the Prosecutor:
Mr Eric Ostberg
Mr Mark Harmon
Mr Terree Bowers

VI. DETERMINING THAT REPUBLIKA SRPSKA AND THE FEDERAL REPUBLIC OF YUGOSLAVIA (SERBIA AND MONTENEGRO) HAVE FAILED TO COOPERATE WITH THE TRIBUNAL.

96. After initially confirming the indictments submitted to the Trial Chamber, Judge Claude Jorda, on 25 July 1995, and Judge Fouad Riad, on 16 November 1995, issued warrants of arrest for Radovan KARADŽIĆ and Ratko MLADIĆ; they were sent, in particular, to the Bosnian Serb administration and to the Federal Republic of Yugoslavia (Serbia and Montenegro). The indictments were transmitted to the competent authorities by the Registrar of the Tribunal; the first on 1 August 1995, the second on 21 November (to the Federal Republic of Yugoslavia) and on 22 November 1995 (to the Bosnian Serb administration). Further, at the Prosecutor's request, the Registrar asked Republika Srpska on 10 May 1996 and the Federal Republic of Yugoslavia on 13 May 1996 to arrange the publication of the indictments in their newspapers having wide circulation pursuant to Rule 60

97. To date, personal service of the indictments has not been effected on Radovan KARADŽIĆ and Ratko MLADIĆ, and the arrest warrants have not been executed.

98. On the basis of all the Tribunal's rules and regulations, and in particular Article 29 of the Statute and Rule 2(A) ("State") of the Rules of Procedure and Evidence, the Bosnian Serb administration (officially entitled "Republika Srpska" following the Peace Agreement signed on 14 December 1995 - the Dayton Accord) is bound to cooperate with the Tribunal. Despite the presence of Radovan KARADŽIĆ and Ratko MLADIĆ on the territory under its control, Republika Srpska has neither served the two indictments on the accused nor executed the warrants for their arrest.

99. The Trial Chamber believes that Radovan KARADZIĆ and Ratko MLADIĆ were in the Federal Republic of Yugoslavia on several occasions. The Prosecutor produced four letters sent by Judge Antonio Cassese, President of the International Tribunal, to Mr. Slobodan

Milošević, President of the Republic of Serbia.[231] In those letters, on the several occasions when the accused were on the territory of the Federal Republic of Yugoslavia, President Antonio Cassese requested the assistance of the Yugoslav authorities in order to execute the warrants of arrest issued by the Tribunal. The letters related in particular to:

- Ratko MLADIĆ's stay in Belgrade for medical attention during the second half of September 1995 (letter of 18 September 1995);
- Radovan KARADŽIĆ's presence at Belgrade on 23 September 1995 (letter of 27 September 1995);
- Radovan KARADŽIĆ's trip to Belgrade for official talks with President Milošević on 24 October 1995 (letter of 23 October 1995);
- Ratko MLADIĆ's stay in Belgrade for medical attention at the end of November 1995 (letter of 29 November 1995).

The Federal Republic of Yugoslavia has never provided the requested assistance as required according to the terms of Article 29 of the Statute. In addition, the Prosecutor has noted the presence of the accused in Belgrade on several other occasions, particularly, during high level meetings on 3 August 1995, 29 August 1995, and 7 February 1996. Furthermore, on 22 May 1996, President Cassese sent a letter to the President of the United Nations Security Council in which he indicated that, despite the presence of Ratko MLADIĆ in Belgrade on 21 May 1996 for the funeral of General Đorđe Đukić, the authorities of the Federal Republic of Yugoslavia did not execute the warrants of arrest[232].

100. In addition, the Trial Chamber notes that during the negotiations in Dayton, the Federal Republic of Yugoslavia committed itself to take all the necessary steps to ensure that Republika Srpska fully respects and complies with the obligations specified in annexes 1-A and 2 of the peace agreement signed on 14 December 1995[233]. Pursuant to Article 10 of annex 1-A, Republika Srpska, *inter alia*, has undertaken the obligation to "cooperate fully with all entities involved in the implementation of this peace settlement, (...) including the International

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[231] Exhibits 76-80.

[232] Exhibit 80.

[233] "On behalf of the Federal Republic of Yugoslavia, I wish to assure you that the Federal Republic of Yugoslavia shall take all the necessary steps, consistent with the sovereignty, territorial integrity and political independence of Bosnia and Herzegovina to ensure that the Republika Srpska fully respects and complies with the provisions of the aforementioned annexes (annex 1-A and 2)" (Letters of 21 November 1995, signed by Milan Milutinović, Minister of Foreign Affairs of the FRY, addressed to the Ministers of Foreign Affairs of the Contact Group: Klaus Kinkel, German Minister of Foreign Affairs; Hervé de Charette, French Minister of Foreign Affairs; Andre Kozyrev, Russian Minister of Foreign Affairs; Malcolm Rifkind, British Minister of Foreign Affairs; Warren Christopher, US Secretary of State).

Tribunal for the former Yugoslavia."[234] Therefore, the Federal Republic of Yugoslavia has given an undertaking to ensure that Republika Srpska would cooperate fully with the International Tribunal. That undertaking was given by the Federal Republic of Yugoslavia at the request of the delegation of Republika Srpska at Dayton to guarantee the international obligations of Republika Srpska.[235] As the Trial Chamber has noted above, Republika Srpska has not honoured its obligations to the Tribunal which also implies the failure of the Federal Republic of Yugoslavia.

101. In light of all the above, the Trial Chamber considers that the failure to effect personal service of the indictments and to execute the warrants of arrest issued against Radovan KARADŽIĆ and Ratko MLADIĆ may be ascribed to the refusal of Republika Srpska and to the Federal Republic of Yugoslavia to cooperate with the Tribunal. Accordingly, the Trial Chamber so certifies for the purposes of notifying the Security Council.

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[234] "The Parties shall cooperate fully with all entities involved in the implementation of the Peace settlement, as described in the General Framework Agreement, or which are otherwise authorised by the United Nations Security Council, including the Internation Tribunal for the Former Yugoslavia" (Annex 1-A, Peace Agreement signed on 14 December 1995).

[235] "President Slobodan Milošević, Head of the Delegation of FR of Yugoslavia
Dear Mr. President,

We write to you regarding the Peace Agreement and the documents which are to be initialled at the conclusion of the peace negotiations in Ohio. Since it is requested, in a number of documents prepared for adoption, that the FR. of Yugoslavia be the guarantor of the obligations taken by the RS in the peace process, we kindly ask you to assume, on behalf of the FRY, the role of the guarantor that the Republika Srpska shall fulfil all the obligations it took.

The Delegation of the Republika Srpska: Momčilo Krajišnik (signed), Nikola Koljević (signed), Aleksa Buha (signed). Dayton, 20 November 1995.

VII DISPOSITION

FOR THE FORE GOING REASONS,

PURSUANT to Rules 59 bis and 61 of the Rules of Procedure and Evidence,

CONSIDERING the decisions confirming the indictments issued by Judge Jorda and Judge Riad on 25 July and 16 November 1995,

CONSIDERING the warrants of arrest issued on 25 July and 16 November 1996,

CONSIDERING the decisions of 18 June 1996 in which Judge Jorda and Judge Riad ordered the Prosecutor to refer the case to the Trial Chamber,

HAVING HEARD the submissions of the Prosecutor, the presentation of the *amici curiae* and the statements of the witnesses during the hearings of 27 and 28 June and 1-5 and 8 July 1996 at the seat of this Tribunal,

THE TRIAL CHAMBER

RULING unanimously and in public,

ORDERS the joinder of cases IT-95-5-R61 and IT-95-18-R61;

INVITES the Prosecutor to supplement the indictments;

STATES that there are reasonable grounds for believing that Radovan KARADŽIĆ and Ratko MLADIĆ committed the offences with which they are charged in the indictments issued on 25 July and 16 November 1995;

CONFIRMS the sixteen counts of the indictment of 25 July 1995 and the twenty counts of the indictment of 16 November 1995;

ISSUES international warrants of arrest for Radovan KARADŽIĆ and Ratko MLADIĆ;

STATES that the warrants shall be transmitted to all States, and, if necessary, to the Implementation Force (IFOR);

NOTES that the failure to effect personal service of the indictment can be ascribed to the refusal to cooperate with the Tribunal by the Federal Republic of Yugoslavia (Serbia and Montenegro) and by the Bosnian Serb administration in Pale which has become Republika Srpska, and entrusts the responsibility of so informing the Security Council to the President of the Tribunal, pursuant to Rule 61(E).

Done in French and English, the French version being authoritative.

Claude Jorda
Presiding Judge of Trial Chamber I

Dated this eleventh day of July 1996
At The Hague
The Netherlands